UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 598

Case No. 594: NICOLAS

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Françoise Nicolas, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 31 March 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 28 March 1991, the Applicant filed an application requesting the Tribunal:

> "(1) To rule that the Secretary-General did not classify the functions of the Applicant commensurate with the nature of the duties and responsibilities required of the post;
>
> (2) To order the classification of the Applicant's functions at the GS-7 level with retroactive effect to 1 June 1985, date at which the Applicant assumed the functions of Research Assistant/Personal Assistant in the Office of the Director, Policy, Programming and Development Planning Division (PPDPD), DTCD [Department of Technical Cooperation for Development];
>
> (3) To order that the Applicant be placed in a suitable post at the Principal level (GS-7) at the earliest possible date;
>
> (4) To order that the Applicant be considered as having been reclassified to the GS-7 level as of 1 June 1985, for seniority purposes; and, to the

extent that such retroactive classification cannot be formally implemented, to order that she be granted damages in an amount equivalent to the difference in salary between her level as of 1 June 1985 and the GS-7 level from that date until she is placed against a suitable GS-7 level post;

...

(7) To fix an appropriate award of compensation to the Applicant for damages caused both financially and to her career prospects, as a result of the irregular actions of the Respondent, in an amount of no less that $25,000;

(8) To award moral damages in an exemplary amount, to be fixed by the Tribunal;

..."

Whereas the Respondent filed his answer on 3 February 1992;

Whereas the Applicant filed written observations on 15 April 1992;

Whereas, on 7 and 13 October 1992, the Applicant submitted an additional statement and further documents;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by New York General Service Classification Appeals and Review Committee (NYGSCARC) in making its recommendations on the level of the posts."

Whereas, on the same date, the Tribunal put further questions to the Applicant and also asked her "to advise the Tribunal whether there is any further information that ... she wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and the Applicant, on

9 November 1992, provided her comments thereon, together with replies to the questions put by the Tribunal;

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Françoise Nicolas entered the service of the United Nations on 1 November 1971, as a Bilingual Clerk-Stenographer, on a probationary appointment at the GS-3, step V level, in the Office of Technical Cooperation in the Department of Economic and Social Affairs. On 1 November 1973, she was given a permanent appointment. From March 1975 to 31 December 1977, the Applicant served as an International Administrative Assistant/Secretary in Bucharest, Romania, receiving a Special Post Allowance (SPA) to the GS-4 level. The Applicant was promoted to the GS-4 level, with effect from 1 April 1977. In 1978, the Applicant's Department was renamed "Department of Technical Cooperation for Development (DTCD)".

In June 1985, the Applicant was transferred to a post at the GS-5 level, receiving an SPA to the GS-5 level as a Research Assistant, with effect from 1 January 1986 until 31 December 1988.

In July 1982, the International Civil Service Commission (ICSC) had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS), announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the

General Service and related categories in New York". On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

On 11 November 1987, the Assistant Secretary-General for the Office of Human Resources Management (OHRM[1]) announced to the staff, in information circular ST/IC/87/59, "Transitional measures for staff in the General Service and Related Categories at Headquarters appointed or assigned to new functions in 1985 or 1986". In accordance therewith, the Applicant submitted a job description of her post. The post was reviewed by the Compensation and Classification Service on the basis of the General Service Job Classification Standards approved by ICSC and of the revised guidelines for the "Technical Co-operation Related occupation". The post was classified at the GS-5 level. The Applicant was promoted to the GS-5 level with retroactive effect from 1 June 1986, with the functional title of Technical Cooperation Assistant.

In a memorandum dated 16 February 1989, addressed to the Assistant Secretary-General for Human Resources Management, the Applicant appealed the classification decision, on the basis of information circular ST/IC/86/27/Add.1, paragraph 2(b), arguing essentially that "the classification standards were incorrectly interpreted for [her] occupation group."

In accordance with administrative instruction ST/AI/301, paragraph 10, and information circular ST/IC/86/27, Annex II, the Compensation and Classification Service reviewed the case on the basis of the job description submitted and of the information supplied by the Applicant in her memorandum of appeal. Following

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[1] Successor of OPS.

the review and analysis by the Compensation and Classification Service and in accordance with the procedure specified in administrative instruction ST/AI/301 dated 10 March 1983 and Annex II of information circular ST/IC/86/27, dated 28 April 1986, the Assistant Secretary-General for OHRM submitted the case to NYGSCARC for advice on 3 May 1990.

NYGSCARC reviewed the Applicant's appeal at its nineteenth meeting on 9 August 1990. Its findings read as follows: "Based upon its review of the job description, the information provided by the appellant in the memoranda of appeal, the analysis provided by the Compensation and Classification Service which confirmed the initial classification decision, the Committee concluded that the functions of the post corresponded to the GS-5 level depicted in the General Service Classification Standards." It recommended "that the post be maintained at the GS-5 level in the Technical Cooperation Related occupation."

On 31 August 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC.

According to the record, the Applicant sought the Secretary-General's agreement to submit her appeal against this decision directly to the Tribunal.

On 15 November 1990, the Assistant Secretary-General for OHRM informed the Executive Secretary of the Tribunal that:

> "1. [The Applicant] has informed the Secretary-General that she wishes to submit to the Tribunal an application against the classification decision of post No. NO4433, taken after the New York General Service Classification Appeals and Review Committee had communicated its opinion to the Secretary-General.
>
> 2. Under the circumstances of this case, the Secretary-General is of the opinion that submission of the dispute to the New York General Service Classification and Review Committee satisfies the requirement that a dispute be submitted to 'the joint appeals body' set out in article 7, paragraph 1, of the Administrative Tribunal Statute.

3. Alternatively, the Secretary-General would agree to the direct submission of Ms. Nicolas' application to the Administrative Tribunal."

On 28 March 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent's decision to classify her post at the GS-5 level instead of at the GS-7 level, was improper in that the GS-5 level was not commensurate with the duties and responsibilities of the post.

2. The establishment of NYGSCARC and its procedures violated the Applicant's appeal rights under the Staff Regulations and Rules.

3. The Respondent failed to perform a job classification "audit" of the post she encumbered, as required by administrative instruction ST/AI/301.

4. The Respondent's decision to classify the Applicant's post at the GS-5 level was vitiated by prejudice.

Whereas the Respondent's principal contentions are:

1. The Respondent' s discretionary decision with regard to the classification the Applicant's post was properly taken, following an independent review by a specialized appeals body.

2. In accordance with its jurisprudence, the Tribunal cannot substitute its judgement for that of the Secretary-General in job classification matters.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant in this case challenges the decision dated 31 August 1990, by the Respondent, adopting a recommendation dated 30 August 1990, by the New York General Service Classification Appeals and Review Committee (NYGSCARC). The

decision rejected the Applicant's classification appeal and found that her post was properly classified at the G-5 level. The Applicant claims that her post should be classified at the G-7 level, effective 1 June 1985. She also claims that she should be placed in a suitable post at that level, at the earliest possible date. In the event that such retroactive classification cannot be implemented, the Applicant asks that she be granted damages from 1 June 1985, in an amount equivalent to the difference in salary at her level and the GS-7 level, from that date, until she is placed against a suitable GS-7 post. The Applicant also contends that the Respondent has failed to observe applicable rules and regulations and has violated administrative procedures relating to classification and promotion. In addition, she asserts that her right to due process was tainted by the prejudiced attitude of the Executive Office of DTCD. Based on the foregoing, the Applicant claims additional damages.

II. In a letter dated 15 November 1990, the Respondent consented to direct submission to the Tribunal of an application by the Applicant against the classification decision of Post No. NO4433, dated 31 August 1990. It is only that classification decision which is before the Tribunal. The Tribunal finds no need for oral proceedings herein. Although the Respondent's communication dated 15 November 1990, referred to above, expresses the belief that NYGSCARC stands in the same position as a Joint Appeals Board insofar as the jurisdiction of the Tribunal is concerned, the Tribunal has not decided that issue and sees no need to do so at this time. (Cf. Judgements No. 597, Colayco (1993), para. X; No. 602, Calder (1993), para. X).

III. The issues in this case are similar to those presented to the Tribunal in Judgement No. 541, Ibarria (1991). In Ibarria, the Tribunal recalled its jurisprudence in Judgement No. 396, Waldegrave (1987), in paragraph XV of which the Tribunal held:

> "It is not the function of the Tribunal to substitute its judgment for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether, under all the circumstances, the Respondent has acted within his reasonable discretion..."

The same principles govern this case. The Applicant's contentions are aimed largely at persuading the Tribunal that the content of the Applicant's post is such that it should be classified at the GS-7 level. As indicated above, however, the Tribunal will not enter into an evaluation of the elements of the Applicant's job description.

IV. For the reasons set forth in paragraph III above, the Tribunal makes no determination as to whether the Applicant's substantive contention that the proper classification of her post should be at the GS-7 level, is meritorious. That is for the Respondent to determine in the exercise of his reasonable discretion, based upon such appropriate analysis and advice from NYGSCARC as he may wish to rely upon. In rendering such advice, NYGSCARC must, of course, ensure that it has taken into account and considered fairly the views of the Applicant and of knowledgeable officials in her department, though NYGSCARC is not bound by those views. Proper classification of a post should be in accordance with applicable ICSC standards and should be based on a reasonable evaluation of the factual content of a post as set forth in its description.

V. As in Ibarria, the Tribunal's concern is with matters such as a denial of due process, if the staff member neither sees nor has an opportunity to comment on documentation sent by the Service in charge of classification to NYGSCARC. In this case, it is clear

that a significant memorandum dated 21 February 1990, submitted by the Acting Chief, Compensation and Classification Service, to NYGSCARC and on which NYGSCARC relied in its recommendation to the Respondent, was not made available to the Applicant. She, therefore, had no opportunity to submit material she deemed relevant with regard to that memorandum. The Tribunal directed that the memorandum be made available to the Applicant and she has submitted a memorandum dated 9 November 1992, with respect to it.

VI. It appears that some possibly material information, which was not previously presented, is contained in the Applicant's 9 November 1992 memorandum. Accordingly, the Tribunal finds that this case should be remanded to the Respondent. He should arrange for consideration by NYGSCARC of relevant material submitted to the Tribunal by the Applicant in her memorandum to the Tribunal, dated 9 November 1992. In addition, to the extent that it may be relevant to proper classification of Post No. NO4433, NYGSCARC should also take into account the material submitted to the Tribunal by the Applicant in her application, in her observations on the Respondent's answer, and in her memorandum to the Tribunal dated 13 October 1992.

VII. NYGSCARC is, of course, free to seek such further relevant analysis, information and advice as it wishes from the Compensation and Classification Service or the Administration. The Administration is certainly entitled to submit its views. The Applicant should, of course, be given an opportunity to comment on those views. The Tribunal reiterates that NYGSCARC is not required by the Tribunal's Judgement to accept or reject any or all of the Applicant's substantive contentions. The reasons for NYGSCARC's conclusions and recommendation should be explained clearly.

VIII. The Tribunal notes that one of the Applicant's contentions relates to a job classification audit. As the Tribunal found in Ibarria, the Compensation and Classification Service has discretion

as to whether to conduct an audit in any particular case. If it wishes, it may do so in this case. But, if it decides against conducting an audit because it does not deem one necessary for its analysis and advice, that will provide no basis for a claim by the Applicant.

IX. With the exception of delay resulting from the need for a remand, the Tribunal, at this stage, does not consider that there is any basis for an award of compensation as claimed by the Applicant in her pleas. The Tribunal finds no merit in the Applicant's contentions alleging prejudice.

X. In view of the foregoing, the Tribunal orders that:

(a) The case be remanded, as set forth above;

(b) The Applicant be paid three months' of her current net base salary as compensation for the delay resulting from the need for a remand;

(c) All other pleas are rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary